

WAGE GARNISHMENT ORDINANCE
HOOPA VALLEY TRIBE
HOOPA VALLEY INDIAN RESERVATION

TITLE 45

Ordinance No: 1-97

Date Approved: June 5, 1997

Subject: Wage Garnishment Ordinance of the Hoopa Valley Tribe

WHEREAS, the Hoopa Valley Tribal Council is the governing body of the Hoopa Valley Indian Tribe of California pursuant to authority in Article V, Section 1 of the Hoopa Valley Tribal Constitution and Bylaws as approved by the Commissioner of Indian Affairs on August 18, 1972 and subsequently confirmed and ratified by the United States Congress on October 31, 1988 (25 U.S.C. § 1301 *et seq.*);

WHEREAS, the Hoopa Valley Tribal Council is authorized to negotiate with federal, state and local governments on behalf of the Tribe; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to promulgate and enforce ordinances governing the conduct of members and non-members of the Hoopa Valley Indian Tribe within the exterior boundaries of the Hoopa Valley Indian Reservation pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council is authorized to safeguard and promote the peace, safety, morals and general welfare of the Hoopa Valley Indians pursuant to Article IX of the Hoopa Valley Tribal Constitution and Bylaws; and

WHEREAS, the Hoopa Valley Tribal Council deems a Wage Garnishment Ordinance is necessary for safeguard and promotion of peace, safety, morals and the general welfare of the Hoopa Valley Tribe as well as individual members of the Hoopa Valley Tribe.

NOW, THEREFORE BE IT RESOLVED, that the following Ordinance governing wage garnishments of individual employees' wages of the Hoopa Valley Indian Tribe is hereby adopted and shall be effective upon approval by the Hoopa Valley Tribal Council.

§ 1. PURPOSE

The purpose of this Ordinance is to establish a systematic and uniform procedure for garnishment of wages of employees of

the Hoopa Valley Tribe or a tribal entity pursuant to orders of the Hoopa Valley Tribal Court recognizing foreign judgments of judgment creditors in a fair, equal and fiscally responsible manner. This Ordinance shall also establish a systematic and uniform procedure for garnishment of wages of employees of the Hoopa Valley Tribe or a tribal entity pursuant to orders of the Hoopa Valley Tribal Court arising out of original proceedings in such court. This Ordinance is not intended to prohibit judgment debtors and judgment creditors from reaching alternative agreements/settlements of their claims. This Ordinance is not intended to alter or diminish the rights of the Hoopa Valley Tribe to collect debts owed to the Hoopa Valley Tribe or its entities pursuant to Title 28, Tribal Debt Collection Ordinance of the Hoopa Valley Tribe.

§ 2. DEFINITIONS

- A. **"Council"** means the Hoopa Valley Tribal Council as established by the Hoopa Valley Tribal Constitution and Bylaws.
- B. **"Creditor"** means a person to whom a debt is owing by another person who is the debtor.
- C. **"Debt"** means a sum of money due by certain and express agreement, including a specified sum of money owing to one person from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.
- D. **"Debtor"** means a person who owes a debt to another and may be compelled to pay a claim or demand by a creditor.
- E. **"Disposable Wages"** means that part of the wages of an individual left after deduction of federal tax withholding, and any other amounts required by applicable law to be withheld by the employer.
- F. **"Employee"** means a person employed by or in the service of the Hoopa Valley Tribe or one of its subordinate entities under any contract of hire, express or implied, oral or written, where the Hoopa Valley Tribe has the power or right to control and direct such individual in return for which such individual receives a salary or wages. For purposes of this Ordinance, "employee" shall also include Council members, commission members and committee members.
- G. **"Employer"** means the Hoopa Valley Tribe or one of its subordinate entities.

- H. **"Foreign Judgments"** means a judgment rendered by the Courts of the State of California, any other state of the United States or federal court which is politically and judicially distinct from the Hoopa Valley Tribal Court.
- I. **"Garnishment"** - shall mean the method to obtain satisfaction of a judgment by reaching the unpaid past or future wages of an employee of the Hoopa Valley Tribe or a tribal entity. Garnishment shall not include voluntary wage assignments by employees of the Hoopa Valley Tribe.
- J. **"Judgment Creditor"** means a person in whose favor a money judgment has been entered by a Court of law and who has not yet been paid.
- K. **"Judgment Debtor"** means a person against whom judgment has been recovered, and which remains unsatisfied.
- L. **"Tribal Entity"** means the Hoopa Valley Tribe itself, its departments, programs, entities and subdivisions operating under a governing document established pursuant to authority contained in the Hoopa Valley Tribal Constitution and Bylaws.
- M. **"Wages"** means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus or otherwise. For purposes of this Ordinance, "otherwise" includes Council and committee honoraria.

§ 3. APPLICABILITY

This Ordinance applies to any foreign judgment against an employee of the Hoopa Valley Tribe or of a tribal entity that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal.

§ 4. RECOGNITION AND ENFORCEMENT

A foreign judgment against an employee of the Hoopa Valley Tribe or of a tribal entity meeting the requirements of section 6 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money.

§ 5. ORIGINAL ACTIONS IN THE HOOPA VALLEY TRIBAL COURT

A creditor may seek appropriate relief in the Hoopa Valley Tribal Court against a debtor pursuant to the rules of the Hoopa Valley Tribal Court outlined at Title 1 through Title 3 of the Hoopa Valley Tribal Code.

§ 6. ENFORCEMENT OF FOREIGN COURT ORDERS, JUDGMENTS OR DECREES

a) The Hoopa Valley Tribal Court shall recognize, implement and enforce the orders, judgments and decrees of foreign courts against an employee of the Hoopa Valley Tribe or of a tribal entity in matters in which either the exclusive or concurrent jurisdiction has been granted or reserved to a foreign court under the laws of the United States or the State in which the foreign court is situated unless the Hoopa Valley Tribal Court finds the foreign court that rendered the order, judgment or decree:

1) lacked jurisdiction over a party or the subject matter;

2) denied due process as provided by the Indian Civil Rights Act of 1968; or

3) does not reciprocally provide for recognition and implementation of orders, judgments and decrees of the Hoopa Valley Tribal Courts.

b) A foreign judgment is not conclusive if:

1) the judgment was rendered under a system which does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

2) the foreign court did not have jurisdiction over the subject matter; or

3) the foreign court did not have personal jurisdiction over the defendant.

c) A foreign judgment need not be recognized if:

1) the defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable him to defend;

2) the judgment was obtained by extrinsic fraud;

3) the cause of action or defense on which the judgment is based is repugnant to the public policy of the Hoopa Valley Tribe;

4) the proceeding of the foreign court was contrary to an agreement between the parties under which the dispute in

question was to be settled otherwise than by proceedings in that court;

5) the judgment conflicts with another final and conclusive judgment; or

6) in the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action.

§ 7. PERSONAL JURISDICTION

The foreign judgment against an employee of the Hoopa Valley Tribe or tribal entity shall not be refused recognition for lack of personal jurisdiction if:

a) the defendant was served personally in the foreign state;

b) the defendant personally appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

c) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved

§ 8. NOTICE AND OPPORTUNITY TO BE HEARD

The judgment creditor shall afford notice of the action in the Hoopa Valley Tribal Court to the judgment debtor and shall also request a hearing pursuant to the rules of the Hoopa Valley Tribal Court at which the debtor will be given the opportunity to be heard regarding recognition of the foreign court order, judgment or decree.

§ 9. GARNISHMENT OF WAGES FOR SATISFACTION OF JUDGMENT

a) In a civil action for garnishment filed by a judgment creditor, the court may order garnishment of unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed in the Hoopa Valley Tribal Court unless the judgment remains unsatisfied sixty (60) days after such judgment was entered. In an action for garnishment, the judgment debtor shall be named as a defendant. In no case shall the Hoopa Valley Tribe, tribal entity, Council, or officials of the Hoopa Valley Tribe be named as Defendants, unless such individual is the debtor or judgment debtor. Nothing contained herein shall prohibit recognition of judgments against

individual debtors or judgment debtors merely because of their position with the Hoopa Valley Tribe.

b) The maximum amount of wages subject to garnishment in any one pay period shall be twenty five percent (25%) of the judgment debtor's disposable wages for one pay period consistent with applicable federal law.

c) A garnishment order recognized by and/or rendered by the Hoopa Valley Tribal Court against an employee of the Hoopa Valley Tribe or tribal entity shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his employment with the Hoopa Valley Tribe or tribal entity provided that if the judgment debtor is rehired by the Hoopa Valley Tribe or a tribal entity within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.

d) No employer shall discharge an employee for the reason that a judgment creditor of the employee has garnished or attempted to garnish unpaid earnings of the employee.

§ 10 ADMINISTRATIVE PROCESSING FEE

The Tribe's Fiscal Department shall have the right to assess a \$2.00 processing fee upon the Judgment Debtor for each pay period of garnishment of wages of an employee of the Hoopa Valley Tribe or tribal entity.

§ 11. CHILD SUPPORT ORDERS

All child support orders rendered against an employee of the Hoopa Valley Tribe or tribal entity issued by the Superior Court of the State of California are exempt from section 6 through section 9, subsections (a) and (b), and shall be enforced upon presentation to the Hoopa Valley Tribe, or one of its subordinate entities, by which the judgment debtor is employed.

§ 12. SAVING CLAUSE

This Ordinance does not prevent the recognition or non-recognition of a foreign judgment in situations not covered by this Ordinance.

§ 13. STAY IN CASE OF APPEAL

If the judgment debtor satisfies the court either that an appeal is pending or that he is entitled to and intends to appeal from the foreign judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a

period of time sufficient to enable the judgment debtor to prosecute the appeal.

§ 14. EFFECTIVE DATE, AMENDMENT

This Ordinance shall be effective from the date of its approval by the Tribal Council. This Ordinance may be amended as provided in Article IV, section 3 of the Hoopa Valley Tribal Constitution and Bylaws.

§ 15. SEVERABILITY

If any part of this Ordinance is held to be invalid, the remainder shall continue to be in full force and effect to the maximum extent possible.

§ 16. SOVEREIGN IMMUNITY NOT WAIVED

Nothing in this Ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Hoopa Valley Indian Tribe from unconsented suit in State, Federal or Tribal Court against the Hoopa Valley Tribe, any Tribal entity or any official acting in his or her official capacity.

CERTIFICATION

I, the undersigned, as Chairman of the Hoopa Valley Indian Tribal Council, do hereby certify that the Hoopa Tribal Council is composed of eight (8) members of which at least five (5) were present, constituting a quorum at a Regular Meeting thereof; duly and regularly called, noticed, convened and held this 5th day of June, 1997; and that this Ordinance was duly adopted by a vote of four (4) in favor, none (0) opposed, and none (0) abstaining and that said Ordinance has not been rescinded, amended or modified in any way.

Dated this 5th day of June, 1997.

Dale Risling, Sr., Chairman
Hoopa Valley Tribal Council

ATTEST: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council